

REMARKS

Claims 3-6 have been cancelled. Claims 1 and 2, as amended, and claim 7 remain in the case.

Claim 1 (amended) is rejected under 35 U.S.C. 112 as being indefinite because of a recitation that there is no structural member between electrodes. The recitation has been eliminated by amendment of claim 1, thereby obviating the '112 rejection.

Claim 1 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Zito in view of Brecht. The combination is justified in the office action by a statement that "[i]t would be obvious...to prepare a battery with no structural member between the electrodes such as an solid electrolyte or separator... while including a single electrolyte..."

MPEP § 2143.01 provides:

The mere fact that references can be combined or modified does not render the combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680.

In other words, the office action has not made a *prima facie* case of obviousness of combining Zito and Brecht.

The substantive matter of cancelled claim 6 is now included in claim 1(amended). Accordingly, claim 1 (amended) now calls for chambers with tap water therein.

The office action alleges that Hummel "teaches a battery where ... tap water...act[s] as an electrolyte..." Hummel refers

to "an electrolyte component of the cell" (column 7, line 64) without specifically identifying what the "electrolyte component" is. However, Hummel does state that his "entire structure ... may, be electrically considered as a monolithic electrode at any single point..." (Column 7, line 67 to column 8, line3).

The office action further states that in Hummel "[t]he battery may have water added to replenish the supply...". Hummel calls for an introduction of tap water "to establish a continuous volume, or even film of electrolyte..." (Column 12, lines 30 and 31). Hummel continuously refers to the tap water and the electrolyte as being separate entities. It should be understood that although the tap water is introduced into Hummel's battery to activate a battery and become a component of its electrolyte, the electrolyte includes more than tap water. Thus, for example, when tap water is added to an acid electrolyte of a lead-acid battery, the acid electrolyte is not transformed into tap water.

Applicant can find no teaching of tap water used as an electrolyte in either Hummel, Zito, or in any of the art of record. For reasons given hereinbefore claim 1(amended) is allowable over the ground of rejection. Since claim 2(amended) depends from claim 1(amended), claim 2 (amended) is also allowable.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zito and Brecht in view of Colbeck. The office

action makes no attempt at setting forth reasons for *prima face* obviousness of combining Zito, Brecht and Colbeck.

Claim 7, which depends from claim 1 (amended), calls for a positive copper electrode and a negative zinc electrode in the battery of claim 1 (amended). The office action alleges that Colbeck discloses the electrodes. More particularly, the office action alleges that the positive copper electrode is disclosed in column 2, lines 60-75 of Colbeck. Applicant could find no such teaching in Colbeck. Parenthetically, column 2 of Colbeck does not have 75 lines. Because the positive copper electrode is not disclosed by Colbeck and because claim 7 depends from claim 1 (amended) which has been shown to be allowable, claim 7 is allowable over the ground of rejection.

The specification has been amended to cancel what the office action regards as new matter.

Since claims 1, 2, as amended, and claim 7 have been shown to be allowable, examination of claims 1 and 2, reconsideration of claim 7 and an early allowance thereof is hereby requested.

Respectfully submitted,

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